

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH E. M.,

Plaintiff,

V.

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

CASE NO. 2:24-CV-1901-DWC

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff filed this action under 42 U.S.C. § 405(g) seeking judicial review of Defendant’s denial of his application for disability insurance benefits (“DIB”).¹ After considering the record, the Court concludes the Administrative Law Judge (“ALJ”) erred in her evaluation of certain medical opinion evidence. Had the ALJ properly considered this evidence, Plaintiff’s residual functional capacity (“RFC”) may have included additional limitations, or the ultimate disability determination may have changed. The ALJ’s error is, therefore, not harmless, and this matter is

¹ Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. See Dkt. 2.

**ORDER REVERSING AND REMANDING
DEFENDANT'S DECISION TO DENY BENEFITS**

1 reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner of
2 Social Security (“Commissioner”) for further proceedings consistent with this order.

3 **I. Factual and Procedural History**

4 Plaintiff filed a claim for DIB with a protective filing date of December 1, 2021, alleging
5 disability beginning on March 1, 2019. Dkt. 7, Administrative Record (“AR”) 201–02. His
6 application was denied at the initial level and on reconsideration. AR 75–86. He requested a
7 hearing before an ALJ, which took place on October 19, 2023. AR 35–60, 101, 186–87. Plaintiff
8 was represented by counsel at the hearing. *See* AR 35. On November 20, 2023, the ALJ issued
9 an unfavorable decision denying benefits. AR 14–34. The Appeals Council denied Plaintiff’s
10 request for review, making the ALJ’s decision the final decision of the Commissioner. AR 1–6,
11 197. Plaintiff appealed to this Court. *See* Dkts. 1, 4.

12 In the final decision, the ALJ found Plaintiff had the severe impairments of lumbar
13 degenerative disc disease and stenosis, obesity, and degenerative joint disease of the knees. AR
14 19. Despite these impairments, the ALJ found Plaintiff had the RFC to perform light work as
15 defined in 20 C.F.R. § 404.1567(b), “except with no climbing ladders, ropes, or scaffolds;
16 occasional crawling, crouching, kneeling, and stooping; frequent climbing ramps or stairs; and
17 no concentrated exposure to extreme cold, vibration or hazards (defined as work at heights).” AR
18 24.

19 **II. Standard of Review**

20 When reviewing the Commissioner’s final decision under 42 U.S.C. § 405(g), this Court
21 may set aside the denial of social security benefits if the ALJ’s findings are based on legal error
22 or are not supported by substantial evidence in the record. *Bayliss v. Barnhart*, 427 F.3d 1211,
23 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Substantial
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1 evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a
 2 conclusion.” *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (quoting *Consol. Edison Co. v. NLRB*,
 3 305 U.S. 197, 229 (1938)). “We review only the reasons provided by the ALJ in the disability
 4 determination and may not affirm the ALJ on a ground upon which he did not rely.” *Garrison v.*
 5 *Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014).

6 “[H]armless error principles apply in the Social Security Act context.” *Molina v. Astrue*,
 7 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other grounds* by 20 C.F.R. § 404.1502(a).
 8 Generally, an error is harmless if it is not prejudicial to the claimant and is “inconsequential to
 9 the ultimate nondisability determination.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050,
 10 1055 (9th Cir. 2006); *see also Molina*, 674 F.3d at 1115.

11 III. Discussion

12 Plaintiff contends the ALJ erred in evaluating certain medical opinion evidence and
 13 Plaintiff’s testimony about the severity of his symptoms. Dkt. 9 at 1. He states the proper remedy
 14 for these errors is remand for an award of benefits or for further proceedings. *Id.* at 11.

15 A. Medical Opinion Evidence

16 Plaintiff argues the ALJ erred in rejecting medical opinion evidence from consultative
 17 examiner Avery Sills, PA-C, and Plaintiff’s primary care physician, Luis Garduno, M.D. Dkt. 9
 18 at 8–10. When evaluating medical opinion evidence, ALJs “will not defer or give any specific
 19 evidentiary weight, including controlling weight, to any medical opinion(s) or prior
 20 administrative medical finding(s). . . .” 20 C.F.R. §§ 404.1520c(a), 416.920c(a).² Instead, ALJs
 21 must consider every medical opinion or prior administrative medical finding in the record and

22
 23 ² The regulations regarding the evaluation of medical opinion evidence have been amended for claims filed on or
 after March 27, 2017. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844,
 5867–68, 5878–79 (Jan. 18, 2017). Because Plaintiff’s application was filed after that date, the new regulations
 24 apply. *See* 20 C.F.R. §§ 404.1520c, 416.920c.

1 evaluate the persuasiveness of each one using specific factors. *Id.* §§ 404.1520c(a),
2 416.920c(a).

3 The two most important factors affecting an ALJ's determination of persuasiveness are
4 the "supportability" and "consistency" of each opinion. *Id.* §§ 404.1520c(a), 416.920c(a).
5 "Supportability means the extent to which a medical source supports the medical opinion by
6 explaining the 'relevant . . . objective medical evidence.'" *Woods v. Kijakazi*, 32 F.4th 785, 791–
7 92 (9th Cir. 2022) (quoting 20 C.F.R. § 404.1520c(c)(1)); *see also* 20 C.F.R. § 416.920c(c)(1).
8 An opinion is more "supportable," and thus more persuasive, when the source provides more
9 relevant "objective medical evidence and supporting explanations" for their opinion. 20 C.F.R.
10 §§ 404.1520c(c)(1), 416.920c(c)(1). "Consistency means the extent to which a medical opinion
11 is 'consistent . . . with the evidence from other medical sources and nonmedical sources in the
12 claim.'" *Woods*, 32 F.4th at 792 (quoting 20 C.F.R. § 404.1520c(c)(2)); *see also* 20 C.F.R. §
13 416.920c(c)(2). ALJs must articulate "how [they] considered the supportability and consistency
14 factors for a medical source's medical opinions" when making their decision. 20 C.F.R. §§
15 404.1520c(b)(2), 416.920c(b)(2). "Even under the new regulations, an ALJ cannot reject an
16 examining or treating doctor's opinion as unsupported or inconsistent without providing an
17 explanation supported by substantial evidence." *Woods*, 32 F.4th at 792.

18 Avery Sills, PA-C, evaluated Plaintiff on February 14, 2023. AR 990. Her notes indicate
19 she reviewed "specialty clinic notes" in Plaintiff's record. *Id.* She noted Plaintiff's report of
20 constant low back pain rating seven out of ten at rest and nine to ten out of ten with walking or
21 standing. AR 991. Plaintiff also reported left side radiation down the lateral leg to the foot
22 associated with numbness, tingling, and burning, as well as emerging intermittent numbness and

1 burning on the right side. *Id.* He complained of weakness with walking and sometimes stumbled
2 on his feet. *Id.*

3 On physical examination, PA-C Sills found Plaintiff had a steady gait, was able to rise
4 from his chair and walk to the exam table without assistance, and was able to heel-toe walk
5 without assistance for a brief distance, but she noted he appeared to be in mild pain during the
6 exercise. AR 992. She found no gross deformities and normal muscle bulk in his upper and lower
7 extremities during motor exam but noted mild discomfort with hip flexion. AR 993. She also
8 noted pain on palpation of Plaintiff's lumbar spine. *Id.* Plaintiff's supine straight leg raise was
9 normal on the right side but abnormal on the left at 30 to 50 degrees. *Id.* On examination, PA-C
10 Sills found reduced range of motion in bilateral shoulder external rotation, and in lumbar spine
11 flexion, extension, lateral flexion, and rotation. AR 995.

12 She listed among Plaintiff's diagnoses: "Low back pain [with] reduced [range of motion]
13 and paresthesia secondary to lumbar stenosis with neurogenic claudication, left sided lumbar
14 radiculopathy, lumbar facet arthropathy and pars defect." AR 997. She found Plaintiff's overall
15 prognosis to be "[f]air, expect some (~50%) improvement in the next 12 months assuming
16 optimal treatment," but she noted anticipated barriers or limitations to treatment of financial
17 stressors and poor coping skills. *Id.*

18 PA-C Sills completed a medical source statement regarding Plaintiff's functional
19 capabilities "based on the claimant's physical condition only as assessed by the information
20 available today, including objective findings on the claimant's exam as well as assessment of the
21 natural history of the claimant's medical/physical conditions." AR 998 (emphasis in original).
22 Among other opined limitations, PA-C Sills found Plaintiff could stand/walk for 30 minutes to
23 two hours per day and 15 to 45 minutes at a time. *Id.* She also opined Plaintiff could sit for 30
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1 minutes to two hours per day and 30 to 60 minutes at a time. *Id.* She found Plaintiff's overall
 2 function in these areas was poor. *Id.* PA-C Sills listed her physical examination of Plaintiff and
 3 his diagnoses as the bases for these opinions. *Id.*

4 The ALJ found PA-C Sills' opinion unpersuasive "because it is based too much on the
 5 one-time exam and the claimant's subjective complaints, rather the rest of the record, which
 6 shows stable back deficits on imaging along with conservative treatment, and mild knee deficits
 7 on imaging along with limited treatment." AR 28.

8 Regarding the supportability of PA-C Sills' opinion, the ALJ first found it was "based too
 9 much on the one-time exam[.]" *Id.* An ALJ may consider the length, purpose, and extent of the
 10 treating relationship in considering the persuasiveness of a medical opinion. *See* 20 C.F.R. §
 11 404.1520c(c)(3). However, the fact a provider examined a claimant only once, standing alone, is
 12 not a legally sufficient basis for rejecting the provider's opinion. *See Yeakey v. Colvin*, No.
 13 CV13-05598, 2014 WL 3767410, at *6 (W.D. Wash. July 31, 2014) ("Discrediting an opinion
 14 because the examining doctor only saw claimant one time would effectively discredit most, if not
 15 all, examining doctor opinions."); *Keri J. v. Comm'r of Soc. Sec.*, No. 3:20-CV-5779, 2021 WL
 16 4026320, at *2 (W.D. Wash. Sept. 3, 2021) ("[T]he fact that [the provider] only examined
 17 Plaintiff twice is not, in and of itself, a valid reason for discounting her opinion, especially in
 18 light of the revised regulations, which eliminate the regulatory distinction between 'treating' and
 19 'examining' opinions, and provide that an examining source 'may have a better understanding'
 20 of an individual's limitations."). The ALJ erred in discounting PA-C Sills' opinion on this basis.

21 The ALJ next found PA-C Sills' opinion was unpersuasive because it was based on
 22 Plaintiff's subjective complaints. AR 28. An ALJ may reject a physician's opinion "if it is based
 23 'to a large extent' on a claimant's self-reports that have been properly discounted as incredible."
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1 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (quoting *Morgan v. Comm'r. Soc.*
 2 *Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)). Although PA-C Sills noted she considered
 3 Plaintiff's subjective reports of pain, she also reviewed some of Plaintiff's prior medical records
 4 and specifically indicated her opinions regarding Plaintiff's standing, walking, and sitting
 5 limitations were based on Plaintiff's diagnoses and her physical examination, as well as the
 6 clinical interview. *See AR 998–99*. Accordingly, substantial evidence does not support the ALJ's
 7 conclusion that PA-C Sills' opinion was based to a large extent on Plaintiff's subjective
 8 complaints, and the ALJ erred in finding the opinion unpersuasive on this basis.

9 The ALJ did not make any specific findings regarding consistency but noted “the rest of
 10 the record . . . shows stable back deficits on imaging along with conservative treatment, and
 11 mild knee deficits on imaging along with limited treatment.” AR 28. The ALJ provided no
 12 citations to the record or any additional explanation in support of this statement. Although the
 13 ALJ is responsible for resolving conflicts in the evidence, she must explain her reasoning to
 14 allow for this Court's review. *See Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir. 2020); *Brown-*
 15 *Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015). Because of the lack of explanation and
 16 specific reference to the record, the Court cannot determine whether this finding is supported by
 17 substantial evidence. *See Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require the
 18 ALJ to build an accurate and logical bridge from the evidence to her conclusions so that we may
 19 afford the claimant meaningful review of the SSA's ultimate findings.”).

20 For the above reasons, the Court concludes the ALJ failed to properly evaluate PA-C
 21 Sills' medical opinion. Accordingly, the ALJ erred. Had the ALJ properly evaluated this
 22 evidence, the ultimate disability determination may have changed, or the RFC may have
 23 included additional limitations. For example, PA-C Sills opined Plaintiff could sit for only 30
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1 minutes to 2 hours per day and only 30 to 60 minutes at a time. AR 998. The ALJ did not
 2 account for any need to change positions in the RFC.³ See AR 24. Accordingly, the error is not
 3 harmless and require reversal.

4 B. *Remedy*

5 The Court may remand a case “either for additional evidence and findings or to award
 6 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court
 7 reverses an ALJ’s decision, “the proper course, except in rare circumstances, is to remand to the
 8 agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
 9 Cir. 2004) (quoting *INS v. Ventura*, 537 U.S. 12, 16 (2002)).

10 Plaintiff requests the Court reverse and remand the ALJ’s decision either for immediate
 11 calculation and payment of benefits or for further proceedings. Dkt. 9 at 11. Plaintiff does not
 12 explain why he is entitled to the extraordinary remedy of an immediate award of benefits, nor
 13 has he shown that the record is free from important and relevant conflicts or that no issues
 14 remain that must be resolved concerning Plaintiff’s functional capabilities. Therefore, remand for
 15 further administrative proceedings is appropriate.

16 C. *Remaining Issues*

17 Plaintiff further contends the ALJ failed to properly evaluate medical opinion evidence
 18 from Dr. Luis Garduno, as well as Plaintiff’s testimony about the severity of his symptoms. Dkt.
 19 9 at 1. As noted above, the Court concludes the ALJ committed harmful error in assessing the
 20 medical opinion evidence of PA-C Sills and remand for further proceedings is appropriate. Due
 21 to this error, the ALJ must re-evaluate all the medical evidence on remand. Because Plaintiff

22 ³ “[A]n individual [who must alternate periods of sitting and standing] is not functionally capable of doing either the
 23 prolonged sitting contemplated in the definition of sedentary work (and for the relatively few light jobs which are
 24 performed primarily in a seated position) or the prolonged standing or walking contemplated for most light work.”
 Social Security Ruling 83-10, 1983 WL 31253, at *4 (Jan. 1, 1983).

1 may be able to present new evidence and new testimony on remand and the ALJ's
2 reconsideration of the medical evidence may impact the assessment of Dr. Garduno's opinion
3 and Plaintiff's testimony, the ALJ must also reconsider this evidence on remand.

4 **IV. Conclusion**

5 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
6 Plaintiff was not disabled beginning March 1, 2019. Accordingly, Defendant's decision to deny
7 benefits is reversed and this matter is remanded for further administrative proceedings in
8 accordance with the findings contained herein.

9 Dated this 27th day of May, 2025.

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12 David W. Christel
United States Magistrate Judge